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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,232	12/05/2003	Roger Thomas	P-US-PR 1111	9216
28368 7590 03/13/2008 THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286				
EXAMINER				
SELF, SHELLEY M				
ART UNIT		PAPER NUMBER		
3725				
MAIL DATE		DELIVERY MODE		
03/13/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/729,232

Applicant(s)

THOMAS, ROGER

Examiner

Shelley Self

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 15-20 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 1 is/are allowed.
6) ☒ Claim(s) 15-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 17, 2007 has been entered.

Terminal Disclaimer

The terminal Disclaimer February 16, 2007 has been approved and entered.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fan (clm. 15) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Examiner further notes the Notice of Draftsperson's Patent Drawing Review filed December 5, 2003.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. With regard to the claims the terms "*exhaust aperture*" and "*exhaust passage*" do not find clear support within the original description. Examiner suggests use of terminology utilized in the written description as it can not be determined what the *exhaust aperture* and *exhaust passage* refer to. Clarification is

required. Examiner further notes the originally filed description provides support for an aperture (18), a tubular aperture (24) and an expulsion aperture (52).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regards to the claims a clear understanding of the claimed invention can not be gleaned as terminology, "*exhaust aperture*" and "*exhaust passage*" utilized in the claims does not find support in either the drawings or the written description. How do the *exhaust aperture* and *exhaust passage* relate to the aperture (18), tubular aperture (24) and expulsion aperture (24) defined within the written disclosure? Clarification is required to facilitate a clear understanding of the claimed invention and proper application of the prior art. With regards to claims 17-20 no art has been applied, however the claims as presently presented are not deemed allowable and clarification is required to facilitate a clear understanding of the claimed invention and proper application of the prior art.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-16 as best as can be understood are rejected under 35 U.S.C. 102(b) as being anticipated by Eichberger et al. (5,815,934). With regard to claims 15 and 16, Eichberger discloses a planer comprising a shoe defining an aperture (fig. 1), a body (fig. 1) defining an exhaust passage (50), a wall, the wall defining a recess 9 (fig. 1); a cutting drum (15); a cutting blade (col. 3, lines 20-23); a conduit (fig. 1) for directing an airflow generated by a fan 911) into said exhaust passage; and wherein said expulsion aperture (Examiner notes area behind cutting drum 15 is an expulsion aperture) located below said exhaust aperture (50) so that the airflow and entrained debris is directed substantially upward to the outlet end of said exhaust passage; wherein the exhaust passage extends in a substantially upward direction (Examiner notes the area behind the cutting drum and above the drum are substantially upward).

Allowable Subject Matter

Claim 1 is allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose or fairly suggest a planer *wherein the conduit directs the airflow over the exterior of the deflector and then to the interior of the deflector before guided by the deflector to outside of the body* in combination with the rest of the claimed limitations as set forth in claim 1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shelley Self/
Primary Examiner, Art Unit 3725

March 4, 2008